

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LEE HUGHES)	
Claimant)	
VS.)	
)	Docket No. 241,237
RENO CONSTRUCTION)	
Respondent)	
AND)	
)	
ST. PAUL FIRE & MARINE INSURANCE CO. and)	
CIGNA PROPERTY AND CASUALTY)	
Insurance Carriers)	

ORDER

Respondent and one of its insurance carriers, St. Paul Fire & Marine Insurance Company (St. Paul), appeal from an Award entered by Administrative Law Judge Robert H. Foerschler on December 17, 1999. The Appeals Board heard oral argument on May 24, 2000.

APPEARANCES

Chris Miller of Lawrence, Kansas, appeared on behalf of claimant. Patricia Wohlford of Overland Park, Kansas, appeared on behalf of respondent and St. Paul. Gary R. Terrill of Overland Park, Kansas, appeared on behalf of respondent and Cigna Property and Casualty.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award. In addition, by Evidentiary Stipulation filed June 22, 2000, the parties have also agreed that claimant's average weekly wage is \$895.24, and claimant should be awarded temporary total disability compensation at the weekly rate of \$366.00 for the period between November 24, 1998 and April 5, 1999.

ISSUES

The Award grants permanent partial disability compensation for a 13 percent whole body disability. The disability award is based on the agreed functional impairment rating. On appeal, respondent and St. Paul deny there was an accident on November 23, 1998,

and contend claimant failed to prove that he met with personal injury by accident that arose out of and in the course of his employment. The date of accident issue is essentially a dispute between the two insurance carriers as to which of them has the coverage for this loss.

In his brief to the Board, claimant also raised an issue concerning his entitlement to an interest penalty pursuant to K.S.A. 44-512b.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be modified to award 19 weeks of temporary total disability compensation for the period from November 24, 1998 through April 5, 1999, per the stipulation, but should otherwise be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in his Award. We agree that the evidence proves claimant suffered accidental injury arising out of and in the course of his employment with respondent on November 23, 1998. Work disability is not an issue. The Board affirms the finding of a 13 percent permanent partial general disability.

As compensability was an issue, at least until the prehearing settlement conference if not the date of the regular hearing, and because of the factual issues described by the ALJ in the Award, the Board will not assess an interest penalty for the period up through the entry of the Award. The Board does not reach the issue of penalties after that date as this issue was raised for the first time on appeal and there has been no hearing on that issue as required by K.S.A. 44-512b(a).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated December 17, 1999, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Lee Hughes, and against the respondent, Reno Construction, and its insurance carriers, St. Paul Fire & Marine Insurance Company and Cigna Property and Casualty, for an accidental injury which occurred November 23, 1998, and based upon an average weekly wage of \$895.24 for 19 weeks of temporary total disability compensation at the rate of \$366.00 per week or \$6,954.00, followed by 53.43 weeks at the rate of \$366.00 per week or \$19,555.38, for a 13% permanent partial general disability, making a total award of \$26,509.38, which is ordered paid in one lump sum less amounts previously paid.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Lawrence, KS
Patricia Wohlford, Overland Park, KS
Gary R. Terrill, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director